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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**

Case #: MPA - 177777

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 1, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on December 21, 2016, by telephone.

The issue for determination is whether the evidence is sufficient to demonstrate that additional personal care worker (PCW) time may be paid for by the Medicaid program.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

Written Submission By: [REDACTED], Nurse Consultant  
Division of Health Care Access and Accountability  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is certified for MA.
2. On March 17, 2016, a prior authorization request was submitted on the petitioner's behalf for 15 hours of personal care worker services per week beginning March 27, 2016. The Department of Health Services ("the department") approved this request in full.

3. On September 7, 2016, an amendment to the previously approved prior authorization request was submitted on the petitioner's behalf for 38.5 hours of personal care worker services per week beginning August 2, 2016. On September 19, 2016, the department issued written notice to the petitioner advising that the request for increased hours was denied.
4. The department's basis for denial is that the clinical documentation submitted by the petitioner's provider does not support the need for increased services or indicate that there has been a change in the petitioner's functional status since the initial request for prior authorization was submitted.
5. The petitioner, age 66, lives alone in the community. She has diagnoses of Rheumatoid Arthritis, schizophrenia, low back pain and mixed incontinence.
6. On July 28, 2016, a Personal Care Screening Tool (PCST) review was performed by a nurse from TLC Personal Care Agency. practitioner for the petitioner on March 13, 2012. The PCST results declared that the petitioner required PCW partial physical assistance with bathing, upper and lower body dressing twice daily and grooming twice daily; that she requires intermittent supervision or cueing when eating; that she needs constant supervision and physical intervention when moving and transferring herself; that she requires constant supervision and physical intervention three times daily with toileting; that she needs physical help with incontinence care twice daily; that she requires medication reminders twice daily; and that she needs additional time for services incidental to tasks. The PCST notes that the petitioner has schizophrenia and is easily distracted and that her need for assistance with various activities of daily living is due to her limited range of motion and decreased strength and coordination.

### **DISCUSSION**

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2). In determining whether to approve such a service request, the department employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include but are not limited to the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* In turn, to be "medically necessary", a service must be "required to prevent, identify or treat a recipient's illness, injury or disability" and must meet the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-

effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and  
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code §DHS 101.03(96m).

The petitioner has the burden of proving that the requested personal care worker hours meets the approval criteria. The standard level of proof applicable is a “preponderance of the evidence”. This legal standard of review means, simply, that “it is more likely than not” that the petitioner meets the criteria necessary for payment by the Wisconsin Medicaid program.

The department provided a letter that detailed its rationale for denying the request for personal care hours in excess of 15 hours per week. In short, the department found that the relatively limited clinical documentation (i.e., medical records from the petitioner’s rheumatologist dated May 2, 2016 and June 21, 2016 respectively and medical records from the petitioner’s internal medicine provided dated April 7, 2016 and June 17, 2016 respectively) submitted does not indicate that the petitioner’s functional needs have increased since the original prior authorization request was submitted and specifically indicate that the petitioner has a normal range of motion.

The petitioner credibly testified that she suffers from arthritis which causes severe pain in her hands, that at times, the entire length of her body aches, that she has had two strokes which were very frightening, that she fell a couple of months ago, that sometimes she “misses a step”, and that she has had significant difficulty breathing for about four months and is currently awaiting test results. As a result of her strokes, shortness of breath, overall pain, and general feeling of physical instability, the petitioner explained that she believes she needs additional personal care worker hours to feel more secure in home. She also testified that sometimes she drops things and sometimes she is unable to get out of bed at all but that she can’t predict when that will happen.

The petitioner is unsatisfied with at least some aspects of the service she had received from TLC Personal Care Agency and stated that she requested that they submit additional information to the department. No such additional information was submitted to me. I note that neither the PCST nor the clinical documentation reference a history of strokes or falls. Based on the petitioner’s testimony, it seems possible those are more recent developments and thus not discussed in the four medical notes that were submitted by TLC with the amended prior authorization request at issue here. However, it is impossible to know that with certainty because TLC did not submit additional documentation.

I am declining to approve Medicaid payment for additional PCW hours. A Division of Hearings and Appeals decision is a review of a decision by a government agency and the question is whether government decision was correct based on the information it had at the time it made the decision. Here the medical records submitted as part of the petitioner’s prior authorization request are simply insufficient to support the information entered into the PCST by the personal care agency. If new medical documentation of deficits is available, the petitioner’s provider may file a new amendment of the existing PA

The provider will not receive a copy of this Decision. Petitioner may provide a copy of this decision to the provider.

**CONCLUSIONS OF LAW**

That the evidence is not sufficient to demonstrate that additional PCW services may be paid for by Medicaid.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 10th day of January, 2017

\s \_\_\_\_\_  
Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 10, 2017.

Division of Health Care Access and Accountability